

VZCZCXYZ0000  
RR RUEHWEB

DE RUEHNR #3830/01 2700429  
ZNR UUUUU ZZH  
R 270429Z SEP 07  
FM AMEMBASSY NAIROBI  
TO RUEHC/SECSTATE WASHDC 2539  
INFO RUEHXR/RWANDA COLLECTIVE  
RUEATRS/DEPT OF TREASURY WASHDC  
RUCPDOG/DEPT OF COMMERCE WASHDC

UNCLAS NAIROBI 003830

SIPDIS

SENSITIVE

DEPT FOR AF/E  
TREASURY FOR VIRGINIA BRANDON

SIPDIS

E.O. 12958: N/A

TAGS: [ECON](#) [KCOR](#) [PGOV](#) [KE](#)

SUBJECT: KENYA: PARLIAMENT MOVES TO PREVENT INVESTIGATION OF  
PRE-2003 CORRUPTION CASES

¶1. (SBU) Summary: Kenya's Parliament has passed a bill containing an amendment to the country's primary anti-corruption law that would effectively bar the Kenya Anti-Corruption Commission from investigating corruption cases prior to May 2003. This brazen attempt to secure immunity for some of the country's biggest past looters appears to be have been orchestrated and paid for by at least two different networks of corrupt individuals, including those in league with ex-President Moi and his family. The very passage of the bill casts Kenya in a negative light, but it's likely that President Kibaki, partly in response to a chorus of local and international protest, will send the bill back to Parliament for deletion of the offending clause. We have weighed in strongly with Kibaki to urge that he not sign the bill. End Summary.

-----  
MPs Roll Back KACC's Power to Investigate Graft  
-----

¶2. (U) On September 12 on a vote of 38 to 27 (out of a total of 222 voting MPs), the Kenyan Parliament passed the Miscellaneous Statute Amendment Bill, an omnibus bill containing a grab-bag of amendments to existing Kenyan legal code. Included in the bill is a clause that prohibits the Kenya Anti-Corruption Commission (KACC) from investigating any corruption cases prior to passage in May 2003 of the bill that created the KACC, the Anti-Corruption and Economic Crimes Act.

¶3. (SBU) Insertion of the clause and passage of the bill marked a sharp turnaround from the Government of Kenya's original intent. The GOK, through the Ministry of Justice and Constitutional Affairs and the Attorney General's Office, had originally proposed several amendments to the Anti-Corruption and Economic Crimes Act and other laws that would have sped up prosecution of corruption cases, conferred greater investigative powers to the KACC, and made it easier to verify wealth declarations filed by public officers. Not only did Parliament's Justice and Legal Affairs Committee, led by MP Paul Muite, reject these changes. It also inserted the clause significantly weakening KACC's powers. Speaking to the Ambassador and Econ/C on September 25, KACC Director Aaron Ringera confirmed that the clause, if it becomes law, would have a devastating impact on KACC's ability to investigate under any Kenyan law any corrupt activities dating prior to May 2003.

¶4. (U) Passage of the bill sparked a brief uproar in the media, with civil society, the private sector, donors, and everyday Kenyans expressing outrage at a measure that will effectively bar investigation of the country's most infamous grand-scale corruption cases, including the Goldenburg scandal of the mid-1990s and the more recent series of security-related procurement scams

collectively referred to as the Anglo-Leasing scandals. Like-minded donors, including the U.S. Mission, signed on to both a public statement condemning passage of the clause and to a letter to President Kibaki containing similar language and urging him not to provide assent to the law. Text of the donor letter to Kibaki follows below in para 12.

-----  
Kroll Report Adds Fuel to Fire  
-----

¶5. (U) Passage of the clause also came only two weeks after the public release, via an unknown source, of the Kroll Report, a forensic investigation commissioned in 2004 by the Kibaki administration to trace the ill-gotten gains of former President Moi, his family, and closest advisors. The report estimates that as much as \$2 billion was looted and laundered overseas, putting Kenya under Moi on par with recent history's greatest kleptocrats.

¶6. (U) Unbowed by criticism of the clause, Justice and Legal Affairs Committee Paul Muite went on the counterattack, justifying the offending clause with a circuitous legal argument about the underlying constitutionality of the KACC and the need to completely overhaul the Anti-Corruption and Economic Crimes Act under a future new constitution. He also sharply criticized the KACC and its Director, Aaron Ringera, as being ineffective and compromised in leading the war against corruption. On this latter point, he struck a chord with some Kenyans, who are critical of Ringera and the KACC for not being aggressive enough in tackling grand-scale corruption cases.

-----  
Ringera: Stressed Out But Still Trying  
-----

¶7. (SBU) In meeting with the Ambassador on September 25, Ringera showed the strain caused by the relentless public criticism of the KACC and of himself personally. He reiterated that investigating grand scale corruption is a long-term, painstaking process not amenable to easy or quick results. On the Anglo-Leasing cases, he said the KACC had sent five files for prosecution to the Attorney General's Office, only to have them returned with a request that the international elements of the cases be completed first. This, Ringera explained, will further delay prosecution. In the UK, he said, the Serious Fraud Office in London had only recently agreed to undertake investigations into the Anglo-Leasing cases that have UK links. Ringera also complained about the Kenyan legal system itself, with its numerous loopholes that effectively preclude prosecution of high-level corruption cases. On the Kroll Report and on why no action was being taken to investigate the family of former president Moi, Ringera said simply, "that's political." No one in the Kenyan political elite, even in the opposition, seriously wants to pursue the Moises, he said. (Note: Ringera has candidly admitted in previous private meetings that investigations of ex-President Moises or of President Kibaki are off-limits because they could de-stabilize the country politically. End note).

-----  
Corruption Networks at Work  
-----

¶8. (SBU) Muite's legal arguments aside, it is clear to most observers that he and other members of the Justice and Legal Affairs Committee conspired to weaken KACC in a bald-face attempt to protect different networks of corrupt former (and current) GOK officials. Muite himself is the attorney for Chris Murungaru, a sitting MP who was a prominent member of Kibaki's inner circle after 2002, but who was dropped from the Cabinet in November 2005 due to credible revelations placing him at the center of the Anglo-Leasing scams (Note: Murungaru has also lost U.S. visa privileges under Presidential Proclamation 7750 for his involvement in Anglo-Leasing. End note). Supporting Muite was MP Njoki Ndungu, famous for her activism on women's issues, but also quietly infamous as Murungaru's girlfriend. Murungaru, said Ringera, almost certainly paid a number of voting MPs to support the amendment, and was himself its loudest backer on the floor.

¶9. (SBU) Reportedly seeking to protect the Moi family from further investigation was Amina Abdullah, a nominated MP on the Justice Committee who reportedly owes her position to the MoIs. She is a cousin of the wife of Gideon Moi, one of the ex-President's two sons and the beneficiary of perhaps \$500 million in ill-gotten gains stashed overseas, according to the findings of the Kroll Report.

-----  
Comment: Will He Assent or Not?  
-----

¶10. (SBU) The clause barring KACC from investigating crimes committed before 2003 is nothing short of outrageous, as it would provide effective immunity from investigation and prosecution to all those who have robbed Kenya of billions of dollars over the past decade, significantly undermining the country's development. Its very passage is a black eye to Kenya's international reputation, and it sends a very negative signal to the private sector, including foreign investors, and to donors about the country's collective will to deal with corruption and improve governance. Further, in light of this episode, we have no hope that Parliament will pass longstanding draft anti-money laundering legislation before it adjourns in the coming two weeks.

¶11. (SBU) Fortunately, the bill requires presidential assent to become law. It is the hope of many in Kenya that the bill is so egregious and transparent in its attempt to protect the corrupt that it will provide President Kibaki with a perfect opportunity (and in the middle of a competitive election campaign, no less) to do the right thing - send it back to Parliament for deletion of the offending clause. When KACC's Ringera attempted to meet with Kibaki recently to urge him to do so, he was told the meeting was unnecessary because the problem would be dealt with. This is a good signal, and we're betting Kibaki will send the bill back to Parliament shortly.

-----  
Text of September 18 Donor Letter to President Kibaki  
-----

¶12. (U) Begin text:

The Honourable Mwai Kibaki  
President

Republic of Kenya  
Nairobi

Mr. President:

We have been following the debate in Parliament last week on a clause in the Miscellaneous Statute Amendment Bill that will effectively prevent the Kenya Anti-Corruption Commission (KACC) from investigating corruption that occurred before 2003 and a clause which would have allowed for the public disclosure of wealth declarations by government officials.

The decision by Parliament sends a wrong signal to Kenyans and the democratic partners on good governance and diminishes the credibility of Kenya in its fight against corruption and impunity. It is obvious that the proposed revision undermines the effectiveness of the Anti-Corruption and Economic Crimes Act and the work of the KACC. Also, we would like to draw your attention to the fact that several countries have been requested by the Kenyan Government to assist the Government in its fight of past corruption cases. This international cooperation is now being clearly jeopardized and will impact negatively on important efforts to recover lost assets.

We therefore urge you not to provide assent to the bill that will truly undermine the effectiveness of the Anti-Corruption and Economic Crimes Act, 2003. This letter is being endorsed by following democratic partners of Kenya: Canada, Norway, Portugal (Presidency of the European Union and on behalf of all EU members States represented in Nairobi), Switzerland and United States of America and signed on their behalf.

End text.

